



NO. 83-31

In the
Supreme Court of the United States

OCTOBER TERM, 1983

PARI-MUTUEL CLERKS UNION OF LOUISIANA,
LOCAL 328
Affiliated with
The Service Employees International Union, AFL-CIO
Respondent

versus

FAIR GROUNDS CORPORATION
Petitioner

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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STATEMENT

Respondent hereby adopts as its statement of the case that presented by Petitioner. Petition at 3-4.

REASONS FOR REFUSING WRIT

I. PETITIONER DOES NOT PRESENT A QUESTION WARRANTING THE COURT'S REVIEW.

The basis for Petitioner's request that this Honorable Court grant *writ of certiorari* in this matter is its contention that:

The Court of Appeals' decision, asserting that the District Court erred in holding that the District Court had a lack of subject matter jurisdiction is *in conflict with the decisions of the majority of the courts in the federal system.* [Emphasis added.] Petition at 4.

Such a statement is misleading however, for closer examination of Petitioner's brief in support of its request for writ of *certiorari* reveals citation of only two cases in support of its position, both of which have been issued by federal district courts—viz., *Indep. Assoc. of Pari-Mutuel Employees of the State of Fla. v. Gulf Stream Park Racing Assoc.*, 407 F.Supp. 855 (S.C. Fla. 1976) and *San Juan Racing Assoc. v. Labor Relations Board of Puerto Rico*, 532 F.Supp. 51 (D.P.R. 1982). *Contra: IBEW Local 1501 v. American Totalisator*, 29 LRRM 2585 (Md. 1982). Petitioner cites no decisions of any Circuit Court of Appeals that either conflict with the Fifth Circuit Court's opinion or that support Petitioner's position. Nor does Petitioner contend that the decision of the court below conflicts with a decision of this Honorable Supreme Court.

Hence, the opinion of the Court of Appeals for the Fifth Circuit is the *sole* decision in the Circuit Courts dealing with the question of whether or not a federal district court should defer, in an independent action to enforce an arbitrator's award in the horse racing industry under §301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a), to the decision of the National Labor Relations Board under §14(c)(1) of the Act, 29 U.S.C. §164(c)(1), to decline to assert jurisdiction over unfair labor practices because the horse racing industry does not substantially affect commerce, being essentially a local concern.¹

¹ In a closely related decision, however, in *Stein v. Mutual Clerks*

Moreover, while both the decision of the Fifth Circuit herein and that of the *American Totalisator* district court are well reasoned and offer a full and complete analysis of the jurisdictional question presented, no such detailed reasoning is offered in either *Gulfstream* or *San Juan Racing Commission, supra*.

Respondent therefore respectfully suggests to the Court that until some challenge is raised by another Circuit Court to the Fifth Circuit Court's excellent and learned opinion herein, it would be premature and inappropriate for the Court to consider the question at this time. The issue does not merit the Court's review.

II. THE COURT OF APPEALS DID NOT ERR IN ITS DECISION THAT A FEDERAL DISTRICT COURT HAS INDEPENDENT JURISDICTION UNDER §301 OF THE LABOR MANAGEMENT RELATIONS ACT.

Respondent respectfully suggests to this Court that Petitioner has raised in its Petition no new question, issue, authority or argument not already fully briefed in the Court below and therefore addressed by the Court of Appeals' decision. Furthermore Judge Goldberg's opinion meticulously analyzes the *de novo* issue presented despite the dearth of reported authority from other courts. The decision thoroughly and thoughtfully examines the federal court's statutory jurisdiction under §301 in relation to the

(Footnote 1 continued)

Guild of Mass., Inc., 560 F.2d 486 (1st Cir. 1977), the Court of Appeals for the First Circuit similarly held under the Labor Management Reporting and Disclosure Act, 29 U.S.C. §402, et seq., that federal courts have jurisdiction over Unions representing employees in the horse racing industry despite the National Labor Relations Board's failure to exercise its jurisdiction over that industry.

National Labor Relations Board's jurisdiction over unfair labor practices under the National Labor Relations Act, 29 U.S.C. §§158-160. Its conclusion that federal courts have independent and plenary §301 jurisdiction to enforce collective bargaining agreements in the horse racing industry providing only that the statutory jurisdictional standards are met is entirely correct—and, indeed, is unchallenged. *See* Syllabus Point I, *supra*.

Respondent therefore rests on the excellent analysis presented by the Court of Appeals and requests this Honorable Court to accept this analysis as Respondent's, in its entirety.

CONCLUSION

For the reasons above asserted Respondent respectfully urges this Honorable Court to deny Petitioner's request for writ of *certiorari*.

Respectfully submitted,

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CERTIFICATE

I hereby certify that copies of the above and foregoing pleading has been served upon all counsel of record, by depositing copies of same in the U.S. mail, postage prepaid, this 20th day of July, 1983.

Marie Healey